FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4168 OF 2005

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : B. P. Dharmadhikari, J.
Dated : 17th January, 2007.

Heard Advocate Shri Bargat appearing for petitioner plaintiff and Advocate Shri Saboo for respondent.

Special Civil Suit No. 37 of 1999 filed by petitioner against respondent - Municipal Council was dismissed on 21/7/2000 because petitioner plaintiff did not supply better particulars. After that dismissal, petitioner moved an application for restoration of suit mentioning that he could not file that application immediately because from 14/6/2000 to 19/6/2001 he was suffering from T.B. and he was under treatment of Dr. Sharma. He entered the witness box and after considering the evidence the court below has found that there was no just or sufficient reason to condone the delay. The application for condonation of delay in moving application for restoration of suit has, therefore, been dismissed.

Advocate Shri Bargat argues that the counsel representing petitioner did not remain present on each date, did not inform the progress on each date to him and therefore, the petitioner could not remain present. He further contends that certificate of Dr. Sharma has been produced on record to substantiate his contention. Advocate Shri Saboo contends that against the order dated 21/7/2000 dismissing the suit, appeal was maintainable and an application as filed is misconceived. On merits, he state that in evidence falsity in stand of petitioner has been exposed and after considering the same in para 15 of the judgment, the court below has rejected his application. Advocate Shri Saboo argues that in these circumstances, this court should not interfere in exercise of writ jurisdiction.

Though, it is the contention of learned counsel for the petitioner that advocate representing petitioner did not remain present on each date before the lower court, I find that what was pressed before the lower court was illness of T.B. from 14/6/2000 to 19/6/2001 and treatment undertaken by petitioner as reason. This has been considered by the court below and the court below has found that the petitioner deposed that from 14/6/2001 to 19/6/2001 he was hospitalized in the hospital. He also given the name of doctor as Dr.Uddhaorao Deshmukh. However, during evidence, he corrected himself and stated that he was in hospital

only for two months and for remaining period he was in house itself. He did not produce any record or certificate of Dr.Deshmukh and the court below has also found that earlier version that he was under treatment of Dr. Sharma is also falsified. It further appears that he stated that he got knowledge on 22/6/2001 when he went to the court and made enquiry.

In these circumstances, I find that the court below has properly evaluated the evidence adduced by the parties and its findings cannot be labeled as perverse. Hence, there is no jurisdictional error or perversity in the matter.

Writ Petition is dismissed. No costs.

JUDGE

Diwale